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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo) Case No. 10-176-EL-ATA
Edison Company for Approval of a New)
Rider and Revision of an Existing Rider.)

**INITIAL POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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INTRODUCTION

On February 2, 2010, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy or the Companies) filed an Application to revise the Companies' current tariffs in order to provide rate relief to certain all-electric residential customers. This Application was filed by FirstEnergy after a substantial number of its all-electric customers expressed concern about their bill for the 2009-2010 winter heating season. The same customers were already receiving a discounted rate, in comparison to standard service offer customers, through a Residential Distribution Credit Rider (RDC) that provides a credit of 1.7 cents per kWh and an Economic Development Rider (EDR) that provides a credit of 1.9 cents per kWh.¹ Together the two credits represent a total rate discount of approximately 3.6 cents per kWh for the all-electric customers.

¹ Staff Investigation and Report (September 24, 2010), Staff Ex. 1-A at 2; Direct Testimony of William R. Ridmann, Co. Ex. 1 at 7, 14-17, 24-25.

On March 3, 2010, the Commission modified, then approved, FirstEnergy's Application but not as a long-term solution.² The Commission directed FirstEnergy to file tariffs that returned charges to all-electric residential customers back to December 31, 2008. In order to achieve this result, the Commission approved the addition of a new Residential Generation Credit Rider (RGC), which granted additional generation credits of 4.2 cents per kWh for Cleveland Electric Illuminating Company's (CEI) all-electric customers, 3.9 cents per kWh for kWhs greater than 1250 for Ohio Edison (OE) customers, and 1.8 cents per kWh for kWhs greater than 2000 for Toledo Edison (TE) customers (for non-apartment all-electric homes).³ This combined rate relief, in effect for all-electric customers since March 3, 2010, remains only through the 2010-2011 winter heating season.⁴

Acknowledging this is not a long-term solution to the issue, the Commission directed its Staff to investigate and file a report regarding the appropriate long-term rates that should be provided to all-electric customers of FirstEnergy.⁵ The report had to include a range of options regarding proposed rates and discounts to be provided to all-

² *In re FirstEnergy*, Case No. 10-176-EL-ATA (Finding and Order) (March 3, 2010).

³ Staff Ex. 1-A at 2-3.

⁴ *Id.* at 3.

⁵ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Finding and Order at 3) (March 3, 2010).

electric residential customers.⁶ On September 24, 2010, Staff filed its Investigation and Report, as directed by the Commission. It provided a range of options, which are supported by an analysis that includes the bill impact upon all-electric residential customers on each schedule.

The Commission later clarified that its March 3, 2010 Finding and Order applied, as well, to any other residential customer who is the successor account to a customer who had previously qualified under the "all-electric" rate schedules specified in FirstEnergy's Application in this proceeding.⁷ After receiving contact from more than 650 people through correspondence and reviewing their letters, the Commission invited more information at the public hearings about the following issues:

Commitments: If you are in an all-electric home, what contracts or written documentation do you have regarding your electric rates now and in the future? Was there a commitment that the rate would remain with the home for future owners?

Electric vs. Natural Gas: If you are in an all-electric home, do you think the Commission should take into account, in setting rates, any difference in cost between heating a home with natural gas or with electricity?

Rate Shock: All-electric homes have had discounted rates for many years. However, future events and policy changes, such as federal environment regulations and wholesale market changes, could make it necessary to alter the discount that may be approved in this case. What is a fair way to move or phase in all-electric home bills to accommodate these changes

⁶ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Finding and Order at 3-4) (March 3, 2010).

⁷ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Second Entry on Rehearing at 1-2) (April 15, 2010).

without causing rate shock and without burdening other customers?⁸

The Commission, through the report of its Staff and issues outlined in its procedural orders, provided the public, and parties to this proceeding, ample notice and opportunity to present proposals and evidence to address the major issues in this case. Accordingly, the different proposals submitted for a gradual phase-in of rates provided by the parties closely resemble, and to a great extent support, what the Staff has proposed through its testimony. And, in regard to the remaining issues, no party presented either sufficient or credible evidence to show that FirstEnergy promised an all-electric discounted rate in perpetuity; and that real estate values of all-electric homes have declined in the absence of such a promise.

I. Background

Various residential all-electric rates were implemented and revised over the years in the service territories of FirstEnergy, beginning in January 1974.⁹ These bundled rates were declining block structures such that the customers' rate declined with greater electricity usage.¹⁰ Decades ago, when the Companies were fully integrated utilities, special rates for electric heating customers were designed to lower rates for all customers.¹¹ This increased sales and allowed the fixed costs of the utility to be spread over a greater num-

⁸ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Entry at 3) (October 14, 2010).

⁹ Staff Investigation and Report (September 24, 2010), Staff Ex. 1-A at 1.

¹⁰ Staff Investigation and Report (September 24, 2010), Staff Ex. 1-A at 1.

¹¹ Direct Testimony of William R. Ridmann, Company Ex. 1 at 8.

ber of kWhs, thereby reducing the per kWh price that a customer would pay for electricity.¹² In addition, increased usage by special rate customers also increased generation plant operations during the winter period, which decreased the need to cycle generating plants.¹³ As a result, operation and maintenance expenses were reduced and this was reflected in the rates customers paid.¹⁴

But then, on July 6, 1999, Amended Substitute Senate Bill No. 3 (S.B. 3) was enacted, effective October 5, 1999. Among other things, S.B. 3 unbundled generation rates and froze distribution rates at their current levels through the end of the five-year market development period. Thus, retail generation service became a competitive service that could be provided either through an electric utility or by a competitive supplier.¹⁵ In 2008, Amended Substitute Senate Bill 221 (S.B. 221) was enacted, which established a state policy to encourage conservation and energy efficiency and required that certain energy efficiency and peak demand reductions be met.¹⁶ The rate design, declining block rates, associated with the special electric heating rate schedules was now inconsistent with state policy to achieve the energy efficiency benchmarks of S.B. 221.¹⁷

¹² Direct Testimony of William R. Ridmann, Company Ex. 1 at 8.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Company Ex. 1 at 11.

¹⁶ *Id.* at 13.

¹⁷ *Id.*

As a result of the changes in the regulation of generation services, the Companies transferred their generating plants to a competitive affiliate, so they no longer own generation assets.¹⁸ Now, the Companies no longer have fixed generation costs, so the Companies' rates for generation service are designed simply to collect the direct costs incurred from generation suppliers to serve their customers.¹⁹ The Companies pass through the charges for generation service to retail customers, so the Companies do not profit from the charges collected for that service.²⁰

On January 4, 2006, the Commission issued its Opinion and Order in FirstEnergy's Rate Certainty Plan adopting an agreement among the parties that included a provision that certain all-electric residential rate schedules for FirstEnergy would no longer be available to new customers or new premises beginning January 1, 2007.²¹

On January 21, 2009, the Commission issued its Opinion and Order in FirstEnergy's distribution rate case.²² In that case, the Commission approved FirstEnergy's proposed consolidation of 32 different residential distribution rate schedules into a single residential distribution rate schedule for each electric utility. To mitigate the impact of this consolidation on customers, including many who were taking service under the dis-

¹⁸ Company Ex. 1 at 11.

¹⁹ *Id.*

²⁰ *Id.* at 12.

²¹ *In re FirstEnergy*, Case No. 05-1125-EL-ATA, *et al.* (Opinion and Order) (January 4, 2006) (citing Stipulation at 12 (September)).

²² *In re FirstEnergy*, Case No. 07-551-EL-AIR, *et al.* (Opinion and Order) (January 21, 2009).

counted all-electric residential rate schedules, the Commission approved a residential distribution credit for certain residential customers.²³

In order to create a generation rate structure consistent with the distribution rate structure approved in FirstEnergy's distribution rate case, the Commission approved stipulations that consolidated various residential generation rate schedules into a single residential generation rate schedule for each electric utility in FirstEnergy's Electric Security Plan (ESP) proceeding.²⁴ The ESP stipulations provided that, for the period between June 1, 2009, and May 31, 2011, generation rates would be determined by a competitive bid process. The Commission also approved, as part of the ESP proceeding, a residential generation credit to mitigate the impact of the generation rate schedule consolidation to customers, including many who were taking service under the discounted all-electric residential rate schedules.²⁵

On August 19, 2009, the Commission accelerated the recovery of the deferrals for the Deferred Distribution Cost Recovery Rider (Rider DDC), which the Commission had previously approved in FirstEnergy's Case No.08-935-EL-SSO.²⁶ Rider DCC was implemented to allow FirstEnergy to recover certain accounting deferrals and carrying charges

²³ *In re FirstEnergy*, Case No. 07-551-EL-AIR, *et al.* (Opinion and Order at 23-24) (January 21, 2009).

²⁴ *In re FirstEnergy*, Case No. 08-935-EL-SSO, *et al.* (Second Opinion and Order) (March 25, 2009).

²⁵ *Id.* at 9-10.

²⁶ *In re FirstEnergy*, Case No. 09-641-EL-ATA, *et al.* (Finding and Order at 4) (August 19, 2009).

for post date-certain distribution expenses, line extension charges, and transition taxes. When Rider DCC was first approved by the Commission it was to exist for 25 years and take effect on January 1, 2011. Subsequently, the Commission determined that it would be beneficial to both residential and nonresidential customers to reduce carrying costs on those deferrals by beginning to recover the deferrals in an accelerated manner over the period of September 2009 through May 2011, but excluding summer months.²⁷

In the March 3, 2010, Finding and Order in this case, the Commission stated that further proceedings would be necessary for the recovery of FirstEnergy's revenue shortfall, as a result of the temporary all-electric discounted rate. During the interim, the Commission authorized FirstEnergy to modify its accounting procedures to defer the difference between the rates and charges to be charged to the all-electric residential customers as a result of the Commission's order in this proceeding and the rates and charges that would otherwise have been charged to those customers.²⁸

A party that contributed to the development of this history was OCC. As a signatory party to all of the stipulations in the cases cited above during the period 2005-2009, with the exception of Case No. 07-551-EL-AIR, OCC supported those changes to the rate

²⁷ *In re FirstEnergy*, Case No. 09-641-EL-ATA, *et al.* (Finding and Order at 4) (August 19, 2009).

²⁸ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Entry at 3) (March 3, 2010).

structure for all FirstEnergy residential customers, including all-electric heating customers.²⁹

II. A Long-term Solution: Staff's Versus Other Parties' Proposals.

Long before the deregulation of generation to now all-electric customers have received a discounted rate in comparison to standard service customers.³⁰ Electric heating customers are currently paying less per kWh than standard residential customers.³¹ In fact, the price advantage that electric heating customers currently enjoy over other residential customers is greater today than it was in December 2008.³²

FirstEnergy explained through testimony why electric heating customers, who were already receiving rate credits through Riders RDC and EDR, may have experienced increases in the cost of electricity in the 2009-2010 winter heating season prior to the implementation of Rider RGC. William Ridmann, Vice President of Rates and Regulatory Affairs, testified there were two primary factors, other than increased usage, that contributed to higher total bills: 1) the elimination of declining block rates, mostly through FirstEnergy's ESP Case No. 08-935-EL-SSO; and 2) the impact of Rider RDD in

²⁹ Company Ex. 1 at 15, 17-20 (OCC was signatory party in stipulations in Case Nos. 05-1125-EL-ATA (RCP); Case No. 08-935-EL-SSO (ESP); and Case No. 09-641-EL-ATA (RDD)).

³⁰ Tr. Vol. II at 507-509.

³¹ Company Ex. 1 at 20.

³² *Id.*; Tr. at 156-159.

Case No. 09-641-EL-ATA.³³ Rider RGC was implemented by the Commission in this case to provide temporary rate relief to all-electric customers, who reportedly were experiencing rate shock as a result of the impact from the above rate design changes. FirstEnergy's rate design changes were necessary due to a change in the law that restructured the electric industry and, more recently, a new state policy law being enacted.

The bills of electric heating customers are expected to decrease in terms of percentage and \$/kWh when Rider RDD terminates on or about May 2011. Assuming Rider RGC remains at the current credit amount, quarterly updated riders remain constant, and all ESP changes from Case No. 10-388-EL-SSO are incorporated in this analysis including a new Rider GEN price, and the same usage level, CEI, OE, and TE customers, will see a decrease in their total charges.³⁴ In comparison of the winter periods of 2010-2011 and 2011-2012, FirstEnergy projects that charges for electric heating customers served by CEI will decrease up to 29%, OE up to 22%, and TE up to 2%.³⁵

Based on the rate design changes made in the cases cited above, as a result of both statutory and regulatory policy changes, a discounted rate for all-electric customers is no longer an option. No longer can all-electric discounted rates be justified upon which they were originally established. And the fact that electric heating rates were in effect for a long time is not a sufficient reason to continue such rates permanently. Recognizing

³³ Company Ex. 1 at 23.

³⁴ *Id.* at 23-24.

³⁵ *Id.* at 24.

these changes and realities, the Commission is entertaining proposals for a long-term solution to the all-electric issue in this case. Staff presented testimony through Robert Fortney, who provided a recommendation on behalf of Staff regarding the appropriate long-term rates that should be provided to all-electric residential customers of First-Energy.³⁶

1. Staff's Proposal

Mr. Fortney relied on rate-making principles, including gradualism, in developing Staff's recommendation.³⁷ In employing the principle of gradualism, it is important to adopt a long-term strategy of moving in the direction of cost causation, and to avoid practices that result in cross subsidies from other customers. When significant changes to prices are prescribed, prices should be increased gradually to give customers time to adjust and respond to the ultimate target price change. Staff's recommendation begins in the following paragraph.

First, Staff recommends that the RDC and EDR credits remain in place for all-electric customers.³⁸ Second, Staff recommends a gradual phase-out of the RGC over a five-year period, as follows: 1) in year one (2011-2012 winter heating season) all-electric customers' rates remain frozen at current levels; 2) in year two (2012-2013 winter heating season) all-electric customers receive 75% of the RGC discount, which applies up to

³⁶ Prefiled Testimony of Robert B. Fortney filed January 24, 2011, Staff Ex. 1.

³⁷ Staff Ex. 1 at 3.

³⁸ *Id.*

a usage of 7500 kWh; 3) in year three (2013-2014 winter heating season) all-electric customers receive 50% of the RGC discount, which applies up to a usage of 7500 kWh; 4) in year four (2014-2015 winter heating season) all-electric customers receive 25% of the RGC discount, which applies up to a usage of 7500 kWh; and 5) in year five and beyond all-electric customers receive no RGC discount.³⁹ But in year five and beyond, all-electric customers will continue to enjoy a 25% discount in comparison to other standard service offer customers under Staff's proposal.⁴⁰

Third, Staff recommends the elimination of the "water heating only" EDR discount, beginning in year 2 or the 2012-2013 winter heating season.⁴¹ Water heating only customers, by definition, do not heat with electricity.⁴² The discount was given to them only because they have an electric water heater.⁴³ Staff's intent behind this proposal was to remove the credit to the generation rate, but these customers would continue to receive the credit only for the distribution rate.⁴⁴

Staff's fourth proposal recommends that whichever all-electric credits are applicable to the grand-fathered all-electric accounts should stay with the property.⁴⁵ And,

³⁹ Staff Ex. 1 at 3.

⁴⁰ Tr. Vol. II at 508-509.

⁴¹ Staff Ex. 1 at 4.

⁴² Tr. Vol. II at 485.

⁴³ *Id.*

⁴⁴ *Id.* at 485-486.

⁴⁵ Staff Ex. 1 at 4.

finally, Staff recommends that all-electric customers, who are former load management customers that do not heat with electricity, should be eligible for the RDC and EDR discounts, but should not be eligible for the RGC discount beginning September 1, 2011.⁴⁶

What Staff means by “[a]ll-electric customers (stay) ‘frozen’ at current levels” in its recommendation⁴⁷ is, essentially, the bill for equivalent usage levels in terms of kilowatt hours would be the same.⁴⁸ And what Staff intended by “current levels” in the recommendation is whatever the bill is right now.⁴⁹ Staff recommends the RGC credit be calculated one time between the time the Commission issues an order in this case (if it adopts Staff’s recommendation) and the time rates go into effect for the September 2011/May 2012 winter heating season.⁵⁰

Once calculated, pursuant to Staff’s proposal, the RGC will remain constant for the 2011-2012 winter heating season.⁵¹ The calculation would take into account the change in the RDD as of May 2011, the new ESP generation rate in effect as of June 2011 as a result of the last auction(s), and the periodic reconciliation of any riders and rider replacements.⁵² After year one or beginning in year two and beyond, all-electric

⁴⁶ Staff Ex. 1 at 4.

⁴⁷ *Id.* at 3.

⁴⁸ Tr. Vol. II at 474.

⁴⁹ *Id.*

⁵⁰ *Id.* at 475-481.

⁵¹ *Id.* at 479.

⁵² *Id.* at 476-481, 488-489.

customers will pay dollar-for-dollar any changes in riders, whether it's a reduction or increase on a dollar per dollar basis.⁵³

Staff's recommendation to cap the RGC discount to 7,500 kWh during years 2-4 is meant to promote conservation in rates.⁵⁴ The average winter usage is somewhere between 2,000 and 2,500 and the average peak winter usage is somewhere around 3,500, as provided by FirstEnergy, so the 7,500 kWh is approximately two to three times the average winter usage for an all-electric customer.⁵⁵ Staff's proposal, which incorporates many rate-making principles, is reasonable and Staff recommends it for approval by the Commission.

Two other proposals were submitted separately in this case by FirstEnergy and OCC. Each one is described below.

2. FirstEnergy's Proposal

Like Staff's proposal, FirstEnergy's proposal would leave Riders RDC and EDR in place without modification.⁵⁶ The Companies' also propose to retain the seasonal rate design for generation charges.⁵⁷ In regard to Rider RGC, the Companies proposal has two parts. First, the RGC would only apply to those residential customers who use electricity as the primary or sole source of heat. And, second, the RGC would gradually

⁵³ Tr. Vol. II at 507.

⁵⁴ *Id.* at 481-482.

⁵⁵ *Id.*

⁵⁶ Company Ex. 1 at 34.

⁵⁷ *Id.*

reduce annually only to the extent that the maximum increase on a total bill basis, assuming the same usage, for all-electric customers is no greater than twelve percent over the prior year's winter period total bill.⁵⁸ The reduction would begin in September 2011 for the 2011-2012 winter heating period and continue each year until the RGC credit is zero.⁵⁹

3. OCC's Proposal

OCC's proposal involves establishing a permanent relationship between the residential standard rates and the credits given to all-electric customers (total bill at the 3,500 kWh usage level), which means maintaining all-electric bills at 65% of the standard bill.⁶⁰ In addition to maintaining the RDC and EDR credits, which amounts to 3.6 cents per kWh for all usage greater than 500kWh, OCC proposes an initial variable RGC credit be applied to all winter usage above 1000kWh, as follows: 1) OE at 1.268 cents per kWh; 2) CEI at 1.312 cents per kWh; and 3) TE at 1.456 cents per kWh.⁶¹

In order to reflect a relationship, as opposed to a fixed rate, OCC proposes a band mechanism to adjust rates over time.⁶² The band would adjust the RGC up or down, depending upon rate changes, such that in the future the 65% relationship between all-

⁵⁸ Company Ex. 1 at 34.

⁵⁹ *Id.* at 34-35.

⁶⁰ Direct Testimony of Anthony J. Yankel (January 10, 2011), OCC Ex. 1 at 4, 35.

⁶¹ OCC Ex. 1 at 4.

⁶² *Id.*

electric bills and Standard bills is maintained.⁶³ The band (+/- 5%) provides a range of 60-70%.⁶⁴ Under OCC's proposal the RGC varies in order to preserve a relative relationship between all-electric customers and standard residential customers' rates and bills.⁶⁵ The band was developed from reviewing historic costs of providing service in the Companies' service territories and assessing what rate relationships were 15-20 years ago between standard and all-electric customers.⁶⁶

It is OCC's proposal that once the initial RGC's are established, that they not be changed unless the relationship between all-electric and standard bills at a usage level of 3,500 kWh gets outside of a band around the 65% target of more than +/-5% or outside the range of 60% to 70%.⁶⁷ This test would only be done at the 3,500 kWh usage level, but the findings would be applied to the RGC that is applied to each customer of FirstEnergy.⁶⁸ If any of the three FirstEnergy operating companies went outside this range, then the RGC for that operating company would be reset such that the 65% target is once again met.⁶⁹

⁶³ ICC Ex. 1 at 4.

⁶⁴ *Id.* at 5.

⁶⁵ *Id.* at 32.

⁶⁶ *Id.* at 5, 32.

⁶⁷ *Id.* at 37.

⁶⁸ *Id.*

⁶⁹ *Id.* at 38.

Mr. Yankel testified, under cross examination, that nonstandard, nonelectric heating customers are included with the all-electric heating customers receiving the discount under OCC's proposal.⁷⁰ Mr. Yankel also testified that the discount would be indefinite under OCC's proposal.⁷¹ The OCC proposal, in effect, has the same impact as a declining block rate because it is essentially two-thirds of the standard rate.⁷² Accordingly, Mr. Yankel agreed that the more electricity you use the less you pay per kWh under OCC's proposal.⁷³

Mr. Yankel testified that he was not aware of whether or not OCC's proposal was inconsistent with any statutory mandates on the Companies to meet reduction in usage benchmarks.⁷⁴ Mr. Yankel testified that the basis for OCC's proposed discount is that it's cheaper to serve electric heating customers than it is to serve other customers.⁷⁵ This conclusion is based on cost of service studies from 1995 for CEI and TE, and 1989 for OE.⁷⁶ Mr. Yankel testified that he does not know today whether the Companies' rates are cost based or not.⁷⁷ Mr. Yankel testified that he does not know what percentage of an

⁷⁰ Tr. Vol. I at 218.

⁷¹ *Id.*

⁷² *Id.* at 219.

⁷³ *Id.* at 219-220.

⁷⁴ *Id.* at 220-223.

⁷⁵ *Id.* at 223.

⁷⁶ *Id.*

⁷⁷ *Id.* at 224-225.

electric heating customers' bill represents distribution costs.⁷⁸ Likewise, he does not know what percentage of an average residential customers' bill represents distribution costs.⁷⁹ Mr. Yankel did agree, under cross examination, that the generation portion of the Companies' rates is market based, as of the late 2000s.⁸⁰ Mr. Yankel did not know that the Companies' Rider GEN, for generation rates, is set through a competitive bidding process.⁸¹ And he agreed that generation costs for the Companies' could be considered a variable cost.⁸²

In regard to his proposal that the discount should begin at 1000 kilowatt hours per month, Mr. Yankel does not know if 1000 kilowatt hours a month represents base load for a typical heating customer.⁸³ Mr. Yankel believes that all customers who did not receive the discount should pay for it through a non-bypassable charge.⁸⁴ The basis for Mr. Yankel's belief that all customers who don't receive the credit should pay for it is the cost of service study attached to his testimony.⁸⁵ The study was done in Case No. 99-

⁷⁸ Tr. Vol. I at 227.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 228-229.

⁸² *Id.* at 229-230.

⁸³ *Id.* at 244.

⁸⁴ *Id.* at 244-245.

⁸⁵ *Id.* at 245.

1212-EL-ETP, which involved FirstEnergy's unbundling of rates.⁸⁶ It was not a traditional ratemaking case where there was a revenue requirement being generated.⁸⁷ As for the non-credit customers paying for the discount, Mr. Yankel did not determine what impact his proposal would have in terms of the percentage change in a customers' bill.⁸⁸ In fact, Mr. Yankel did not determine the overall cost of his proposal.⁸⁹

Mr. Yankel acknowledged that FirstEnergy's cost for generation is based on what market prices dictate or what wholesale suppliers charge the Companies, which is not subject to traditional regulated ratemaking.⁹⁰ Mr. Yankel believes there is a benefit to all ratepayers because of the all-electric discount, but he has never conducted a study on bidding strategies for wholesale suppliers; has no experience as a wholesale supplier; and never consulted one.⁹¹

In comparing the three proposals between Staff, FirstEnergy, and OCC, it is Mr. Fortney's opinion that Staff's proposal provides for the greatest discount that would be passed along to other ratepayers.⁹² Staff's proposal keeps the RGC the same for year 1 and then phases out the credit over the next four years, so really it's a five-year phase

⁸⁶ Tr. Vol. I at 245-246.

⁸⁷ *Id.*

⁸⁸ *Id.* at 246.

⁸⁹ *Id.*

⁹⁰ *Id.* at 249-250.

⁹¹ *Id.* at 250-251.

⁹² Tr. Vol. II at 509.

out.⁹³ FirstEnergy's proposal, in comparison, is more of a three-year phase out.⁹⁴ And OCC's proposal provides a substantially smaller discount (RGC cut by 1/3) in the first year, but then the discount continues permanently at a cost of \$30 million a year.⁹⁵

III. Allocation of Shortfall in Revenue Recovery.

It is Staff's position that other customer classes should not be responsible for the recovery of the deferred purchased power costs associated with the credits that electric heating customers receive. The deferrals accrued from March 2010 through May 2011 were created as a result of the RGC discount approved in this docket.⁹⁶ Accordingly, Staff recommends that the allocation of the recovery of those deferrals should be attributed to the residential class for future recovery consistent with current revenue allocations approved by the Commission in the current ESP and the ESP that will take effect June 2011.⁹⁷

The policy rationale behind Staff's recommendation to recover deferrals solely from residential customers is twofold: 1) there is no reason whatsoever for having General Service customers pay for the revenue shortfalls created by members of the residential class; and 2) the all-electric customers are residential customers, when the bid comes

⁹³ Tr. Vol. II at 509.

⁹⁴ *Id.*

⁹⁵ *Id.* at 509-510.

⁹⁶ Staff Ex. 1 at 4.

⁹⁷ *Id.*

in to FirstEnergy from the auction process.⁹⁸ FirstEnergy adjusts the bids for loss factors and seasonality, and that is what the residential customer is expected to pay so FirstEnergy can pay their generation suppliers.⁹⁹ In short, the ongoing discounts are a revenue shortfall among the residential class and Staff recommends that FirstEnergy continue to collect that from all other residential customers consistent with the distribution credit that is currently provided.¹⁰⁰

FirstEnergy's witness, Mr. Ridmann, testified that CEI and OE should collect the Rider RGC deferral balance as of May 31, 2011, together with interest over a 3 year period beginning June 1, 2011 through May 31, 2014 from residential customers.¹⁰¹ He also testified that TE should collect the Rider RGC deferral balance as of May 31, 2011, together with interest over a 1 year period beginning June 1, 2011 through May 31, 2012.¹⁰² The reason for the shorter period for TE is because the amount to be recovered is expected to be significantly less than the other Companies.¹⁰³

FirstEnergy further advocates that deferrals arising each year starting on September 1, 2011, should be collected from residential customers, with interest, within the

⁹⁸ Tr. Vol. II at 511-512.

⁹⁹ *Id.* at 512.

¹⁰⁰ *Id.*

¹⁰¹ Company Ex. 1 at 46.

¹⁰² *Id.*

¹⁰³ *Id.*

year that the deferral is created, thereby minimizing the amount of interest.¹⁰⁴ And that carrying costs should be calculated based on a debt rate as of February 28, 2010 and without reduction for accumulated deferred income tax.¹⁰⁵

Mr. Ridmann was asked by Attorney Examiner Price to explain the rationale as to why he believes the RGC should be recovered from residential customers.¹⁰⁶ Mr. Ridmann responded that he believes it is fair to have residential customers pay for the RGC because electric heating customers received both the historical benefits that accrued from the previously discounted rates before deregulation and the current benefits accruing to them from the GS/GP (Commercial and Industrial) customers funding the EDR credits.¹⁰⁷ In addition, FirstEnergy's proposal of having residential customers pay for the RGC is consistent with residential customers paying for the RDC.¹⁰⁸

Mr. Fortney testified that "[i]t is [S]taff's opinion and recommendation that FirstEnergy should be granted carrying charges on ...the...deferral bucket plus on any ongoing deferrals, but the ongoing deferrals should be very minimal because they should be recovered on a more immediate basis."¹⁰⁹ Staff supports FirstEnergy's proposal for having the residential customers pay for Rider RGC and all associated deferrals and car-

¹⁰⁴ Company Ex. 1 at 46.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 184.

¹⁰⁷ *Id.* at 184-185.

¹⁰⁸ *Id.* at 185.

¹⁰⁹ *Id.* at 505.

rying costs on those deferrals, as specifically provided through the testimony of Mr. Ridmann above.

IV. No Credible Evidence Supporting a Promise for Permanent Rates.

OCC and CKAP failed to produce any credible evidence to show that FirstEnergy promised a discounted rate to all-electric customers for eternity through sales marketing or otherwise. The two Company letters produced at the proceeding were either discounted by discrepancies in authentication or explained in proper context or shown to be in conflict with the Companies' standard rules and regulations.

Mr. Schmitt, CEO and President of Bob Schmitt Homes, testified that he had no contractual, audio, or other documentary evidence or proof that CEI or Ohio Edison made any promise that a special electric heating rate would last forever.¹¹⁰ In fact, Mr. Schmitt testified that Bob Schmitt Homes received documents, time-to-time, from CEI and Ohio Edison which advised them that rates would be subject to change.¹¹¹ One of those documents, dated December 29, 1990, was identified by Mr. Schmitt and was titled: "Ohio Edison Company Electric Heating Program Analysis Consumer—Customer Study."¹¹²

¹¹⁰ Tr. Vol. II at 310-311, 414-415.

¹¹¹ *Id.* at 425.

¹¹² Tr. Vol. II at 425.

Mr. Schmitt verified that his company received this document through the company's fax machine, as indicated by a fax legend at the top of the page.¹¹³

Mr. Schmitt verified the language at the bottom of the document, which read:

Energy Requirements and hence the relative operating costs will vary with the weather, the personal habits of the occupants, inside temperature maintained, the quality of construction and insulation. Consequently, the operating costs provided are not guaranteed but are submitted as an estimate which is based on rate schedules currently in effect. The incremental costs per kWh for space heating will vary, depending on the billing load and the number of KWHs used for general purpose and air conditioning. These rate schedules are subject to change at any time as new rates are fixed by the various regulatory authorities under which the company operates.¹¹⁴

In addition, in 2006, Bob Schmitt Homes had two documents filed in Case No. 05-1125-EL-ATA, which sought to have the Commission not end the availability of special discount rates to new customers.¹¹⁵ But nowhere in those documents did Bob Schmitt Homes claim that OE, CEI, or TE, ever made any promise that the rates were going to remain in effect, as Mr. Schmitt acknowledged.¹¹⁶

In regard to the two customer letters that were introduced at the hearing, we first heard from OCC witness, Elio Andreatta, who worked at Ohio Edison as a sales repre-

¹¹³ Tr. Vol. II at 425-426.

¹¹⁴ *Id.* at 426; Company Ex. 53.

¹¹⁵ Tr. Vol. II at 429-430.

¹¹⁶ *Id.* at 430.

sentative from 1985-1989.¹¹⁷ In the course of his employment with Ohio Edison Mr. Andreatta testified that he met Thomas Logan.¹¹⁸ Mr. Andreatta was shown Strongsville Exhibit 2, which he testified appeared to be a letter he authored on June 18, 1988, to Mr. Logan on company stationary.¹¹⁹ Mr. Andreatta testified that the signature on the letter looked the way he would write his signature, but did not specifically remember this letter or signing it.¹²⁰ Administrative notice was taken of the fact that the date of the letter, June 18, 1988, was a Saturday.¹²¹ Another interesting fact was his title in the signature block area of the letter, which referred to Mr. Andreatta as a "Sr. Residential Rep."¹²² Mr. Andreatta was a residential representative, but did not have a senior title.

Attached to the letter were two additional sheets that had the title: "First Revised Sheet No. 1."¹²³ After being directed to the second page of that attachment, Mr. Andreatta testified there was a section that read: "Rules and Regulations: The Company's Standard Rules and Regulations shall apply to the installation and use of electric service."¹²⁴

¹¹⁷ Tr. Vol. I at 109.

¹¹⁸ *Id.* at 110.

¹¹⁹ *Id.* at 111-113, 118-119.

¹²⁰ *Id.* at 113.

¹²¹ *Id.* at 122.

¹²² *Id.* at 123-124; Strongsville Ex. 2.

¹²³ Tr. Vol. I at 125.

¹²⁴ *Id.*

Mr. Andreatta was then handed Company Exhibit 46, which he recognized as the rules and regulations that the above quote was referring too.¹²⁵ Reading paragraph D of Roman Numeral II from the first page of Company Exhibit 46 into the record, Mr. Andreatta testified: "Term of contract: Unless otherwise provided therein a service contract shall be for a term of one year or as specified in the applicable rate schedule."¹²⁶

Next, Mr. Andreatta read paragraph B of Roman Numeral I of the same exhibit, as follows:

Revisions: The Company's Schedule of Rates and the Standard Rules and Regulations as herein contained may be terminated, amended, supplemented or otherwise changed from time to time only in accordance with law and the rules promulgated thereunder by the Public Utilities Commission of Ohio. No agent, representative or employee of the Company has any right to modify or alter any provision of the Company's Schedule of Rates or the Standard Rules and Regulations.¹²⁷

Mr. Andreatta testified that at some point in his employment with Ohio Edison he did go over the rules and regulations with the company.¹²⁸ And, lastly, Mr. Andreatta read paragraph C in Roman Numeral II in the same exhibit, as follows:

Service contract the entire agreement: The service contract shall constitute the entire agreement between the customer and the Company and no promise, agreement, or representation of any agent, representative, or employee of the Com-

¹²⁵ Tr. Vol. I at 126.

¹²⁶ *Id.* at 127; Company Ex. 46.

¹²⁷ Tr. Vol. I at 127; Company Ex. 46.

¹²⁸ Tr. Vol. I at 127.

pany shall be binding upon it unless the same shall be incorporated in the service contract.

Mr. Andreatta testified that Ohio Edison also covered this information with him, while he was employed with the company.¹²⁹ Whether Mr. Andreatta authored Strongsville Exhibit 2 is questionable but assuming for the sake of argument he did, the letter is contrary to the applicable tariff in effect at the time and the Companies' standard rules and regulations, as provided above. Therefore, at the very least, if the letter is genuine Mr. Andreatta was not authorized to make such representations.

The next customer letter in the record was addressed to Mr. Willits, who received it in 1980 from CEI.¹³⁰ The letter had the following sentence contained within it: "Under the new rate schedule there will be no change in the discount provisions until there is a change of customer."¹³¹ Mr. Willits testified that he believed the words "discount provisions" in the letter referred to the J rates that he was on at the time.¹³² He further testified that the rate he was paying per kilowatt hour in 1980 had changed over the years.¹³³ Mr. Willits testified that he does not know if the difference between what he was paying for

¹²⁹ Tr. Vol. I at 128.

¹³⁰ Tr. Vol. II at 454-455.

¹³¹ *Id.* at 454-455; CKAP Ex. 31.

¹³² Tr. Vol. II at 461-462.

¹³³ *Id.* at 463.

as to his rate and the other standard rate in December 2009 was larger, and as a result gave him a larger discount, than he had in December 2008.¹³⁴

The purpose of the letter, sent to Mr. Willitts, was to inform electric heating customers that the availability of the discount under the prior rate had been modified by a then recent Commission order.¹³⁵ Attachment WRR-A to Mr. Ridmann's testimony shows the CEI residential rate schedule, effective March 12, 1980, that was in effect prior to the then recent Commission order that prompted the letter.¹³⁶ This schedule shows the discount provision was previously "available only for water heating installations existing on November 28, 1973 and space heating installations existing on December 1, 1977."¹³⁷

Attachment WRR-B, attached to Mr. Ridmann's testimony, is a copy of the CEI residential schedule, effective July 14, 1980, which is the rate schedule that went into effect as a result of the then recent Commission order.¹³⁸ Under that schedule, the discount provision became "...available only for customers receiving service under these provisions on July 14, 1980."¹³⁹ Thus, what changed on July 14, 1980 and what led to

¹³⁴ Tr. Vol. II at 464-465.

¹³⁵ Rebuttal Testimony of William R. Ridmann, Co. Ex. 65 at 4.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Co. Ex. 65 at 4-5.

the sending of this letter was that the availability of the discount provision was now going to be based on the specific customer of record that was taking service as of that date.¹⁴⁰

The discount was no longer based upon what date specific equipment was first installed at the residence.¹⁴¹ Therefore, pursuant to the tariff change, the existing customer was being advised that the discount provision would not be available to the next customer that moved into the residence.¹⁴² The letter does not imply that there may not be a future new rate schedule.¹⁴³ In context, Mr. Ridmann testified, the letter does not in any way state that a specific customer would receive the discount provision forever or for any specified period of time.

CKAP witness, Susan Steigerwald, testified that the letters produced by Mr. Logan and Mr. Willetts are the only two documents that she is aware of that provide a promise of a discount.¹⁴⁴ But these two letters alone, when considered in context from Mr. Ridmann's testimony and with the Companies' tariffs, standard rules and regulations, and the total number of all-electric customers being served by the Companies, does not prove that FirstEnergy promised or guaranteed a discounted rate, forever, to all-electric customers.

¹⁴⁰ Co. Ex. 65 at 5.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Excerpt from the Deposition of Susan Steigerwald taken on January 21, 2011, Vol. I at 264.

Another CKAP witness, Mr. Challender, testified regarding his prior employment with Ohio Edison as a marketing representative.¹⁴⁵ As a former marketing representative, Mr. Challender worked with home builders and developers, including Bob Schmitt Homes, talking about the benefits of installing electric heating and water heating systems in new homes.¹⁴⁶ During his employment with Ohio Edison, working as a sales marketer, Mr. Challender never said anything that was misleading.¹⁴⁷

Ohio Edison owned generation and had a certain cost structure, at that time, when Mr. Challender worked for this Company.¹⁴⁸ Under cross examination, Mr. Challender acknowledged, today, Ohio Edison no longer owns generation and he believes the Company's cost structure could be different now.¹⁴⁹ Mr. Challender acknowledged there was no contract or promise for electric service rates between Ohio Edison and Bob Schmitt Homes, because customers take service under the terms of a tariff approved by the Commission.¹⁵⁰

Mr. Challender identified a form that Ohio Edison used, when he was a marketing representative for the Company, to provide an analysis for prospective homebuyers and

¹⁴⁵ Tr. Vol. III at 551,555.

¹⁴⁶ *Id.* at 551-552, 562-563.

¹⁴⁷ *Id.* at 592.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 592-593, 602-604.

¹⁵⁰ *Id.* at 586-587.

sites or designs for any builder or developer who requested it.¹⁵¹ He acknowledged that the form used by Ohio Edison advised the reader, at the bottom of the page, that: “[r]ates are subject to change at any time as new rates are fixed by the various regulatory authorities under which the company operates.”¹⁵²

Mr. Challender testified that Ohio Edison’s standard rules and regulations, referenced in an Ohio Edison tariff sheet, applied to him when he was an employee of the Company.¹⁵³ Mr. Challender acknowledged that he had to be familiar with the Company’s rules and regulations as an employee of Ohio Edison for the performance of his responsibilities.¹⁵⁴

The rules and regulations make clear that the Companies’ schedule of rates may be changed from time to time only in accordance with the law or rules promulgated by the Commission.¹⁵⁵ And the rules further provide that no agent, representative, or employee, had the right to modify or alter the Companies’ scheduled rates, at any time.¹⁵⁶ Mr. Challender testified that he would not have knowingly represented anything to a customer that

¹⁵¹ Tr. Vol. III at 593-594; Company Ex. 53.

¹⁵² *Id.* at 593-594; Company Ex. 53.

¹⁵³ Tr. Vol. III at 597-600; Co. Ex. 46 and Ex. 63.

¹⁵⁴ Tr. Vol. III at 600.

¹⁵⁵ *Id.* at 600-601.

¹⁵⁶ *Id.* at 601.

was contrary to Ohio Edison's rules and regulations.¹⁵⁷ In fact, Mr. Challenger testified that he never promised any customer or builder that a specific rate was guaranteed.¹⁵⁸

V. No Credible Evidence Supporting Decline in Property Values

The weight to be assessed CKAP's real estate witness should be none, because he is not a proper expert witness that is competent of performing a regression analysis of real estate value comparisons and the reports he relied on were, in his own words, admittedly "wrong."

Mr. Frawley, CKAP's real estate witness, is not a certified real estate appraiser and has no background in statistical analysis.¹⁵⁹ The essence of Mr. Frawley's testimony is "[t]he biggest jump in sales and pricing occurred when the discount was removed and those trends are continuing due to the uncertainty surrounding the all-electric discount rate."¹⁶⁰ The conclusion Mr. Frawley reaches for the essence of his testimony is based upon the tables in his testimony and the "CMA Reports" attached to his testimony, which were all created using the "Multiple Listing Service" ("MLS").¹⁶¹

¹⁵⁷ Tr. Vol. III at 601.

¹⁵⁸ *Id.*

¹⁵⁹ Tr. Vol. II at 243, 290.

¹⁶⁰ CKAP Ex. 1 at 4-5; Tr. Vol. II at 284.

¹⁶¹ Tr. Vol. II at 285.

The CMA reports attached to Mr. Frawley's testimony cover MLS pricing for homes from 2008-2010.¹⁶² Each year has two reports: 1) homes heated with anything other than electricity; and 2) homes heated with electricity.¹⁶³ The CMA does not indicate the condition of the property; whether the property is a condo, cluster home or a detached home; or a rental property or not.¹⁶⁴ Mr. Frawley acknowledged that the real estate market for all homes has suffered serious declines in value all over the state.¹⁶⁵

Other data on the CMA Report shows days on market and cumulative days on market, which is another indicator of the marketability of homes.¹⁶⁶ Using this data on the CMA Report to compare electric and other homes from 2009-2010, the days on market and cumulative days on market were lower in 2010 for electric houses than other houses.¹⁶⁷

Another indicator on the CMS Report is the percent to list price.¹⁶⁸ It represents a ratio of the sales price to the list price.¹⁶⁹ The higher this number is the better the indica-

¹⁶² Tr. Vol. II at 285.

¹⁶³ *Id.* at 285-286.

¹⁶⁴ *Id.* at 286-287.

¹⁶⁵ *Id.* at 288-289.

¹⁶⁶ *Id.* at 291-292.

¹⁶⁷ *Id.* at 292-293.

¹⁶⁸ *Id.* at 293.

¹⁶⁹ *Id.*

tor for marketability or value of the house.¹⁷⁰ If the number improves from one year to the next it indicates an improving market for those types of homes.¹⁷¹ According to the CMA Report, this indicator went up for electric homes from 2009-2010.¹⁷² And the percent to list price ratio for all electric homes was comparable in value to other homes in 2010.¹⁷³

In regard to yet another indicator, Mr. Frawley acknowledged that an improving median price from one year to the next would indicate an improving sales market.¹⁷⁴ In Strongsville, according to Mr. Frawley's CMS Report, the median sales price for all electric homes improved from 2009 to 2010.¹⁷⁵

The price per square foot is a very important number for marketability.¹⁷⁶ The statistic is supposed to represent only finished square footage, which means above ground level, not including basements or garages.¹⁷⁷ Mr. Frawley admitted that agents may, sometimes, not record this information accurately and he did not verify the accuracy of

¹⁷⁰ Tr. Vol. II at 293.

¹⁷¹ *Id.* at 293-294.

¹⁷² *Id.* at 294.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 295.

¹⁷⁵ *Id.* at 295-296.

¹⁷⁶ *Id.* at 300-301.

¹⁷⁷ *Id.* at 301-302.

this information in the CMS Reports attached to his testimony.¹⁷⁸ Mr. Frawley also admitted that some of the listings on his CMS Report attachments had zero for square foot area because the agent inputting information exercised the option to leave the spot with a zero.¹⁷⁹ Under cross examination, Mr. Frawley admitted that the data, where zeros appeared in the data pool from the MLS, was inaccurate and absolutely wrong.¹⁸⁰ As a result, Mr. Frawley conceded there were mistakes in the tables that are in his testimony.¹⁸¹

Finally, Bob Schmitt Homes marketed on its website, as of January 22, 2011, that “[t]he Bob Schmitt Homes Difference” is “[o]ur homes maintain their resale value.”¹⁸² Mr. Schmitt admitted, under cross examination, that this advertising statement included all-electric homes.¹⁸³

CONCLUSION

Staff’s recommendation of gradually reducing the RGC discount, while preserving the RDC and EDR discounts, to avoid rate shock to the all-electric customers, and in the process lower the amount of deferrals and carrying costs to be recovered from the residential customer class in the future, is reasonable and should be adopted by the Commis-

¹⁷⁸ Tr. Vol. II at 302.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 303-304.

¹⁸¹ *Id.* at 306.

¹⁸² *Id.* at 437-438; Company Ex. 61.

¹⁸³ Tr. Vol. II at 438.


sion. OCC and CKAP failed to show that FirstEnergy promised all-electric customers a discounted rate that would never change; and that the real estate values of all-electric customers' homes have declined because of the absence of such promise.

Accordingly, the Commission should adopt Staff's proposal and recommendation, and deny OCC's and CKAP's unsupported and rebutted claims.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Initial Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by electronic mail, upon the following parties of record, this 28th day of March, 2011.


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